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9 **IN THE UNITED STATES DISTRICT COURT**
10 **FOR THE DISTRICT OF ARIZONA**

11 CARRIE FERRARA CLARK,
12 Plaintiff,
13 vs.
14 CITY OF TUCSON,
15 Defendant.

Case No. 4:14-CV-02543-TUC-CKJ

**MOTION TO STRIKE PORTIONS OF
DEFENDANT’S RESPONSE TO
PLAINTIFF’S MOTION IN LIMINE
FOR A WRITTEN JUROR
QUESTIONNAIRE IN ADVANCE OF
VOIR DIRE**

Hon. Cindy K. Jorgenson

16 Plaintiff Carrie Ferrara Clark, pursuant to L.R.Civ. 7.2(i) and (m), respectfully
17 moves to strike portions of Defendant’s response to her motion in limine seeking approval
18 for a written juror questionnaire in advance of *voir dire*.¹ For the reasons discussed below,
19 Defendant’s proposed juror questionnaire (Doc. 156-1) should be denied.

**A. Defendant’s Proposed Juror Questionnaire Should be Stricken in Violation
of L.R.Civ. 7.2(l)**

20 In its response to Plaintiff’s motion in limine for a written juror questionnaire in
21 advance of *voir* (Doc. 154), Defendant submitted “a prototype questionnaire that might be
22 useful in this case” (Doc. 156-1) without following the well-established procedure outlined
23 in L.R.Civ. 7.2(l) (“No opposed motion in limine will be considered or decided unless
24 moving counsel certifies therein that the movant has in good faith conferred or attempted to

25 _____
26 ¹ Normally, Plaintiff would have included its objection and request to strike in a Reply memorandum supporting her underlying Motion in Limine. *See* L.R.Civ. 7.2(m)(2). However, Local Rule 7.2(l) prohibits reply memoranda in support of motions in limine. Therefore, Plaintiff files this as a separate Motion to Strike.

1 confer with the opposing party or counsel in an effort to resolve disputed evidentiary issues
2 that are the subject of the motion. . . .”) In other words, if Defendant wanted to submit its
3 own proposed juror questionnaire, it should have conferred with counsel for Plaintiff and
4 filed a Motion in Limine by January 7, 2019. Having failed to do so, Defendant’s proposed
5 questionnaire should not be considered by this court.

6 Given that Defendant has not objected to the use of a jury questionnaire to
7 *supplement* the jury selection process (not as a replacement for *voir dire*), which is precisely
8 what Plaintiff requested, Defendant’s attempt to circumvent the rules of this court by
9 submitting its own juror questionnaire (which should have been presented as a Motion in
10 Limine) without first notifying and conferring with Plaintiff first should be rejected.

11 **B. Defendant’s Response Lacks any Substantive Rationale for its Proposed
12 Juror Questions**

13 If Defendant had objections to any of the Plaintiff’s proposed juror questions, it
14 should have articulated its objections on a question-by-question basis. In other words, a
15 proper response would have addressed individual objections and articulated factual or legal
16 reasons why the particular question posed by Plaintiff either should not be used or should
17 be reworded. Instead, Defendant submitted its own juror questionnaire without notifying the
18 court or counsel that it intended to do so in violation of well-established local rules.
19 Assuming, *arguendo*, the court does not find Defendant’s proposed juror questionnaire
20 should be denied, Plaintiff replies substantively to each proposed question below.

21 Defendant’s proposed juror questionnaire omits, without explanation, Plaintiff’s
22 proposed questions 1, 2, and 9. All of these questions, however, are pertinent in this case.
23 As to questions 1 and 2, Plaintiff’s lawsuit has been a common topic of conversation in the
24 Tucson Fire Department (TFD). It follows that the social conversations of those associated
25 with TFD - including wives, husbands and friends of firefighters - is relevant and material
26 to the case at bar. Therefore, Plaintiff requests that questions 1 and 2 from its proposed
27 juror questionnaire should be asked in advance of *voir dire*.

28 As to Plaintiff’s proposed question 9, research conducted by members of the
29 American Society of Trial Consultants has determined this is one of the most useful
30 questions to determine fairness to female workplace victims. The analysis of the research

1 indicates that males who do not watch women's sports do not consider females equal to
2 men, thus they tend to find against women in workplace claims. Therefore, Plaintiff's
3 proposed question 9 should be included in the juror questionnaire in advance of voir dire.

4 As to Plaintiff's proposed questions 3, 4, 5, 6, 7, 8, and 10, Defendant has simply re-
5 worded Plaintiff's questions. Defendant's language changes do not make a difference in the
6 information sought. Given that Defendant has not articulated any justification for its
7 proposed language, nor any reason why its format should be used, Plaintiff's proposed
8 questions 3 through 8 and 10 should be asked of the venire panel in advance of *voir dire*.

9 Next, Plaintiff's proposed question 11 is the Defendant's proposed question
10 12. Defendant, however, for some unstated reason, removed the word "partner" from the
11 question. This omission may cause a juror who believes that marriage is unnecessary to feel
12 a sense of rejection or be offended. Therefore, to be inclusive and complete, Plaintiff
13 objects to Defendant's strategic rewording of her proposed question 11.

14 Defendant's proposed question 13 is new and has no bearing on this case
15 whatsoever. Whether or not a prospective juror has ever been a midwife is irrelevant and
16 not reasonably related to the issues presented in Plaintiff's complaint. Plaintiff objects to
17 Defendant's question 13. Finally, defendant's questions 14 and 15 are also new;
18 nevertheless, the questions proposed are fair, relevant, and material to the issues presented
19 in this case. If the court is inclined to allow Defendant's proposed juror questionnaire to be
20 considered, Plaintiff does not object to defendant's proposed juror questions 14 and 15.

21 **C. Conclusion**

22 For the reasons discussed above, Defendant's proposed juror questionnaire should
23 not be considered by this Court. Otherwise, Plaintiff respectfully requests that her proposed
24 juror questionnaire be asked in full, without modification, and does not object to the
25 inclusion of defendant's proposed juror questions 14 and 15.

26 DATED this 21st day of January, 2019.

JACOBSON LAW FIRM

s/Jeffrey H. Jacobson
Jeffrey H. Jacobson
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on January 21, 2019, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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